

129—11.10(8B) Stay of agency action for vendor appeal.**11.10(1) *When available.***

a. Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an additional appeal bond equal to 120 percent of the total contract value. If the contract value is not readily discernable, the office will supply the vendor with an estimate upon request, which estimate shall be determinative. A vendor forfeits an appeal security if, as determined by the purchasing entity, following resolution of the appeal the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor.

b. Any party adversely affected by a final decision and order may petition the purchasing entity for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the purchasing entity within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

11.10(2) *When granted.* In determining whether to grant a stay, the purchasing entity shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

11.10(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the purchasing entity or any other party.

11.10(4) *Where no stay.* Except where provided otherwise in the contract between the parties, in the absence of a stay, the purchasing entity may, in its discretion, proceed to enter into a contract with the awardee during the pendency of the appeal. In the event the purchasing entity enters into a contract with the awardee during the pendency of an appeal and the contract is ultimately determined to be void through this appeal process, following the exhaustion of all opportunities for further appeal including intra-agency appeal or judicial review or appeal therefrom, the original awardee shall only be entitled to amounts, if any, due and owing for actual services or deliverables provided up to the date the contract is declared void and the opportunity for further appeal has fully expired.

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